

IN THE SUPREME COURT OF THE
STATE OF CALIFORNIA

ROBERT SARVEY,)	Case No.: S109258
)	
Petitioner,)	
)	California Energy Commission
v.)	Docket No. 01-AFC-16
)	
CALIFORNIA ENERGY COMMISSION,)	
and DOES I through X, inclusive,)	(Civ. No. 02CS01206)
)	
Respondents, and)	
)	
GWF ENERGY, LLC, URS Corporation,)	
and)	
DOES XII through C, inclusive,)	
)	
Real Parties in Interest.)	
)	
)	
)	
)	

**STATEMENT IN OPPOSITION
TO PETITION FOR WRIT OF MANDATE**

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To the Honorable Chief Justice of the Supreme Court of California, and the Honorable Associate Justices of the Supreme Court of California:

**STATEMENT IN OPPOSITION
TO PETITION FOR WRIT OF MANDATE**

Respondent California Energy Commission (“Energy Commission” or “Commission”) respectfully requests that the Supreme Court deny the “Petition for Writ on the Review of the Decision of the California Energy Commission.”

INTRODUCTION

This case involves a decision of the Energy Commission, formally denominated the State Energy Resources Conservation and Development Commission, to license the Tracy Peaker Project (“TPP”), a 169-megawatt powerplant to be located near the City of Tracy in San Joaquin County. The Commission licensed (“certified,” in the language of the applicable statute) the TPP after a thorough environmental review and an open public process, which included workshops, meetings, and six days of trial-type hearings where all parties were able to present evidence and cross-examine witnesses on all issues.¹ Petitioner Robert Sarvey (“Petitioner”) participated actively throughout the proceeding, as did many other parties, including other nearby landowners, the City of Tracy, the County of San Joaquin, and other governmental agencies such as state and federal environmental agencies and the San Joaquin Valley Unified Air Pollution Control District (“SJVUAPCD”). The Commission’s 290-page decision, which is being submitted under separate cover as an Appendix to this Statement in Opposition, contains over 160 conditions of certification that ensure that all potential environmental impacts are mitigated to insignificance, that public health

¹ The transcripts of the hearings, numbering over 1,600 pages, can be found in PDF format on the Commission’s website at <http://www.energy.ca.gov/sitingcases/tracypeaker/index.html>.

and safety are protected, and that the project complies with all applicable laws. The administrative record, which is over 10,000 pages long, contains extensive analyses of all the potential effects of the project, whether identified by the Commission's independent staff of technical experts, intervenors such as Petitioner, or others. Based on the substantial evidence in the record, the Commission concluded that the TPP will meet all applicable requirements and that its potential impacts will be mitigated to a level of insignificance.

In the face of the thorough and detailed record, Petitioner presents a mélange of vague and unsubstantiated claims, with virtually no reference to the record or to the Decision about which he complains. Petitioner baldly asserts that his claims are true, but he ignores the large body of evidence that supports the Commission's findings. Even the briefest examination of the Commission's Decision will show that the Commission carefully gathered evidence, weighed it, and made appropriate findings on all relevant matters, while affording Petitioner a complete opportunity to present his case. Petitioner's arguments have no merit.

ISSUES PRESENTED FOR REVIEW

- 1. Did the Commission grant a fair hearing to Petitioner?**
- 2. Are the Commission's findings that the TPP complied with all applicable laws, ordinances, regulations and standards supported by substantial evidence?**
- 3. Did the Commission's Decision violate CEQA?**

JURISDICTION OF THE SUPREME COURT

Public Resources Code section 25531, subdivision (a) states that "The decisions of the [energy] commission on any application for certification of a site and related [power] facility are subject to judicial review by the Supreme Court of California."

SCOPE OF REVIEW

The scope of review is set forth in Public Resources Code section 25531, subdivision (b), which reflects the Legislature's desire that the decisions of the Commission on power facility licenses be reviewed under the narrowest scope of review that is consistent with the California Constitution. That section states, in relevant part:

No new or additional evidence may be introduced upon review and the cause shall be heard on the record of the commission as certified by it. The review shall not be extended further than to determine whether the commission has regularly pursued its authority, including a determination of whether the order or decision under review violates any right of the petitioner under the United States Constitution or the California Constitution. The findings and conclusions of the commission on questions of fact are final and are not subject to review, except as provided in this article. These questions of fact shall include ultimate facts and the findings and conclusions of the commission.

(Pub. Resources Code, § 25531, subd.(b).) For the purposes of this Statement, the Commission will assume that the Court's inquiry on "whether the commission has regularly pursued its authority" includes a determination on whether the Commission's findings are supported by substantial evidence in the record.

STATEMENT OF THE CASE

The Energy Commission's Power Facility Certification Process

In California, the construction of any thermal power plant with a generating capacity of at least 50 megawatts ("MW," one million watts) requires a certificate from the Commission. (Public Resources Code §§ 25110, 25120, 25500.)² The Commission's certificate takes the place of all other state, regional, and local permits that otherwise would be required. (§ 25500.)

The Commission's Application for Certification ("AFC") process involves an extensive examination of all aspects of proposed power facilities, including environmental, health, safety, and other factors. (See §§ 25519 - 25523, 25525 – 25529; tit. 20, Cal. Code Regs., §§ 1741 – 1755.) The Commission serves as lead agency under the California Environmental Quality Act ("CEQA"). (§ 25519, subd. (c).) The process focuses on two critical findings that the Commission must make: whether a proposed facility will comply with all applicable laws, ordinances, regulations, and other standards ("LORS") (§ 25523, subd. (d)(1)), and whether it will cause any significant, unmitigable, adverse environmental impacts. (§§ 21080.5, subds. (d)(2)(A), (d)(3)(A), 21100, subd. (b).) The Commission may not approve a project that does not comply with applicable LORS, or that has a significant, unmitigable, adverse environmental impact, unless the Commission also determines that the project has overriding benefits. (§§ 21002, 25525; tit. 20, Cal. Code Regs., §§ 1752, subds. (b), (l), 1755, subds. (b) - (d).)

² Unless otherwise indicated, all section citations are to the Public Resources Code.

The 12-month AFC process consists of several phases, which are designed to ensure that the decisionmakers have all relevant information to the decisionmakers and to foster full public involvement. The phases include (1) determining whether the AFC has enough information so that meaningful analysis may begin; (2) development and exchange of additional information by all parties, through data requests and public workshops; (3) publication of a thorough, detailed assessment of all aspects of the project by the Commission's staff of independent technical experts; (4) evidentiary hearings on contested issues, in which any party may present direct and rebuttal testimony and cross-examine witnesses; (5) publication of a proposed decision and comments thereon, with revisions in response to comments if appropriate; (6) adoption of a final decision by the Commission; and (7) if a party so requests, an opportunity for reconsideration. (§§ 25523, 25525, 25530; Cal. Code Regs., tit. 20, §§ 1716, 1718, 1720, 1742.5 - 1755.)

The Commission's Certified Regulatory Program Under CEQA

As is the case for all discretionary governmental permits in California, the Commission's power plant certification process is subject to CEQA. (See §§ 21080, subd. (a), 25519, subd. (c).) In general, CEQA requires all state agencies to prepare an environmental impact report (hereafter "EIR") on any project they propose to carry out or approve that may cause a significant adverse environmental impact. (§ 21100, subd. (a).) However, when a state regulatory program requires the preparation of a written document that is the "functional equivalent" of an EIR, CEQA also provides that the Secretary of the Resources Agency may exempt the program from the portions of CEQA requiring an EIR. (§ 21080.5, subd. (a).) Such "certified regulatory programs" remain subject to the substantive provisions of CEQA, including the requirements that significant adverse impacts be mitigated where feasible. (§ 21080.5, subd. (d); Cal. Code

Regs., tit. 14, § 15250.) The Resources Secretary certified the Commission's power facility certification program in 1981 and re-certified it in 2000, and the Commission's environmental review of TPP was conducted under the certified program. (See Cal. Code Regs., tit. 14, § 15251, subd. (k).)

The Tracy Peaker Project

The Tracy Peaker Project is a 169-megawatt, simple-cycle, natural-gas-fired powerplant, together with two on-site 115-kilovolt switchyards, an on-site electric transmission line, a water supply pipeline, and improvements to a dirt access road. The Project will be located on a 10.3-acre fenced site within a 40-acre parcel in an unincorporated portion of San Joaquin County, southwest of the City of Tracy. The site is bounded on the north by railroad tracks, and immediately north of the tracks are a glass container manufacturing plant and a warehouse. In addition, a biomass powerplant is located approximately 0.6 miles to the northwest. (Commission Decision, Application for Certification for the Tracy Peaker Project, Docket No. 01-AFC-16, Commission Publication No. P800-02-006, dated July 2002 and adopted July 17, 2002 ("Decision"), p. 9. The Decision is included as an Appendix to this Statement.)

The TPP Proceeding at the Commission

On August 16, 2001, the Applicant filed its AFC, and on October 17, 2001, the Commission found that the AFC contained sufficient data to begin review and assigned a two-Commissioner Committee to conduct the proceeding. (Decision, p. 5; see §§ 25520, 25522; Cal. Code Regs., tit. 20, § 1709, Appendix B.) The staff held its first public workshop on November 20, 2001, the Committee held a site visit and informational hearing on November 28, 2001, and a second workshop was held on January 9, 2002. (Decision, p. 7.) The workshops covered

the topics of Air Quality, Biological and Cultural Resources, Socioeconomics, Traffic and Transportation, Visual Resources, Hazardous Materials, and Waste Management. (*Id.*) All of the workshops were held locally in Tracy. (*Id.*)

In addition to the workshops, the staff and other parties conferred and coordinated their review with the City of Tracy, the County of San Joaquin, the San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD), the San Joaquin Council of Governments, the California Department of Fish and Game, the U.S. Fish and Wildlife Service, and the Native American Heritage Commission. (Decision, p. 7.)

On December 28, 2001, the staff distributed its Staff Assessment, which contained a thorough analysis of the proposed project's potential environmental, public health and safety, and engineering impacts, appropriate alternatives, and recommendations on how to mitigate the impacts. On January 22, 2002, the staff distributed a supplement to the Staff Assessment, which addressed public comment received at the January public workshop. (Decision, p. 7; Staff Assessment, GWF Tracy Peaker Project, December 2001 ("Staff Assessment"); Supplement to Staff Assessment, GWF Tracy Peaker Project, January 2002 ("Supplement"). The Staff Assessment and the Supplement are included as Appendices to this Statement.)

In March 2002, the TPP Committee held six public evidentiary hearings. Parties in the case were given the opportunity to provide written and oral testimony, to cross-examine witnesses, and to rebut the testimony of other parties. The public was also invited to comment. All hearings were held locally and, to the extent practicable, in the afternoons and evenings to facilitate and encourage maximum public participation. Following the hearings, parties were invited to file written briefs on the only contested legal issue: whether the project complied with

San Joaquin County LORS and whether the City of Tracy's LORS were applicable to the Project, even though the Project is located outside of the City's boundaries.

The Committee's *Presiding Member's Proposed Decision* ("PMPD") was issued on May 31, 2002. Following a 30-day comment period, the Committee conducted a public conference on the PMPD on July 2, 2002. The full Commission also conducted a hearing, and adopted the PMPD with minor revisions on July 17, 2002. (Decision, p. 3 [Commission Adoption Order].) The Commission found that with the implementation of the Decision's Conditions of Certification, the project "will be designed, sited, and operated in conformity with all applicable local, regional, state, and federal laws, ordinances, regulations and standards, including applicable public health and safety standards, and air and water quality standards." The Commission also found that the conditions "will ensure environmental quality and assure reasonably safe and reliable operation of the facility [and] assure that the project will neither result in, nor contribute substantially to, any significant direct, indirect, or cumulative adverse environmental impacts." (Decision, pp. 1 - 2 [Commission Adoption Order].) The Commission, therefore, was not required to exercise its override authority pursuant to section 25525.

Petitioner participated actively throughout the proceeding. He submitted data requests to the staff (to which the staff responded) and filed over 300 pages in the record, including written comments on the Staff Assessment, testimony, and a 20-page post-hearing brief. He attended the staff workshops, the Informational Hearing and Site visit, the Prehearing Conference, and all six evidentiary hearings, at which he cross-examined staff's and applicant's witnesses.

ARGUMENT

I. THE COMMISSION GRANTED A FAIR HEARING TO PETITIONER.

Petitioner writes at length alleging that the Commission violated his due process rights (Petition, pp. 16, 53 - 54), but he makes only one specific claim of error: the Commission's denial of his offer of testimony on Biological Resources.

Before addressing the specifics of Petitioner's assertion, it is useful to identify what due process means in the context of administrative adjudication. In its recent amendments to the Administrative Procedure Act, the Legislature has provided an "Administrative Adjudication Bill of Rights" that is intended to protect the Constitutional rights of those whose interests are being adjudicated. Those rights are (1) notice and opportunity to be heard, and to be present to hear and rebut evidence; (2) the availability of a description of the applicable procedures; (3) an open public hearing; (4) "separation of functions" between the decision-maker and investigative, prosecutorial, and advocacy functions (i.e., the respective roles of staff as a party separate from that of the Commissioners as decision-makers), including restrictions on ex parte communications; (5) an unbiased presiding officer; and (6) a decision in writing based on the record. (Govt. Code, § 11425.10, subd. (a); see also Law Revision Commission Comment to section 11425.10.)

The Commission's siting process is designed to encourage public participation and substantially exceeds the requirements of the Administrative Adjudication Bill of Rights. (See Cal Code Regs., tit. 20, §§ 1202, 1235, 1701 et seq.) The process, which is described in detail in the Commission's regulations, provides for several public events, including evidentiary hearings, and notice thereof, prohibits ex parte communications between parties and the

decisionmakers, and requires an extensive written decision with a statement of the legal and factual basis for the decision. (§ 25523; Cal. Code Regs., tit 20, §§ 1216, 1234, 1236, 1745-1755.)

With respect to Petitioner's sole specific claim, the Committee correctly refused to admit Petitioner's offered testimony on Biological Resources. On January 30, 2002, the Committee issued an Order and Filing Schedule, which required parties to pre-file sworn testimony in writing by February 13, 2002. (Hearing Order and Filing Schedule, GWF Tracy Peaker Project, January 30, 2002. This document is included in the attached Appendix.) On March 1, 2002, the Committee issued a Notice of Revised Topic and Witness Schedule For Evidentiary Hearings, which established the schedule for witnesses to appear at the evidentiary hearings. (Notice of Revised Topic and Witness Schedule For Evidentiary Hearings, March 1, 2002. This document is included in the attached Appendix.) The March 1 Notice clearly explained in bold type the consequences of not following the requirements: "The parties are on notice that **FAILURE TO PRESENT WITNESSES AS SCHEDULED . . . CAN CONSTITUTE A WAIVER OF THESE RIGHTS.**" (Notice of Revised Topic and Witness Schedule For Evidentiary Hearings, March 1, 2002, at p.3.)

Petitioner did not pre-file any written testimony on Biological Resources on February 13th or any time thereafter. Nevertheless, on March 6, 2002, the day of the scheduled evidentiary hearing on Biological Resources, Petitioner offered into evidence an unsworn written report by Shawn Smallwood, who was not in attendance and thus not available for cross-examination. Both the staff and the Applicant objected, and the Committee refused to admit the report into evidence. The Committee did, however, include it in the record as a form of unsworn public comment. (Decision, p. 166.)

The Committee's requirement for pre-filing of written testimony was designed to allow the parties to understand the evidence and to prepare for cross-examination, and the rule that witnesses be available when scheduled was obviously necessary to allow parties to cross-examine. Petitioner's failure to follow those elementary procedures fully justified the Committee's refusal to accept the Smallwood report into evidence. As the Law Revision Comments on the Administrative Adjudication Bill of Rights note, "the opportunity to present and rebut evidence, is subject to reasonable control and limitation by the agency conducting the hearing, including the manner of presentation of evidence, whether oral, written, or electronic . . . and other controls or limitations appropriate to the character of the hearing." (Law Revision Commission Comments on Gov't Code, § 11425.10.)

II. THE COMMISSION MADE FINDINGS, SUPPORTED BY SUBSTANTIAL EVIDENCE IN THE RECORD, THAT THE TPP WILL COMPLY WITH ALL APPLICABLE LAWS.

In the Decision, the Commission found that the TPP Project "will comply with all applicable laws, ordinances, regulations, and standards relating to land use as identified in APPENDIX A of this Decision." (Decision, p. 226.) Petitioner makes several unmeritorious challenges to that finding.

A. The Commission Staff Coordinated with All Other Appropriate Governmental Agencies, Including the City of Tracy Fire Department.

Petitioner claims that a provision of the San Joaquin County General Plan that requires "interjurisdictional coordination" was applicable to the Commission and that the Commission violated the provision because, Petitioner alleges, the Commission did not coordinate with the Fire Department of the City of Tracy. (Petition, p. 14.) (The level of "coordination" is quite low: "Interjurisdictional

coordination may be relatively simple, such as the sharing of information, to very complex, such as the sharing of costs for regional facilities." (Petition, at Appendix, Tab 1, p. IV-40.))

First, although the Commission must determine whether a project will comply with the applicable substantive components of a county general plan (§§ 25523, subd. (d), 25525), the Commission is not required to *follow the procedures* that the county would be required to adhere to if it was processing the permit.

Public Resources Code section 25500 states in part:

The issuance of a certificate by the commission shall be in lieu of any permit, certificate, or similar document required by any state, local or regional agency, or federal agency to the extent permitted by federal law, for such use of the site and related facilities, and shall supersede any applicable statute, ordinance, or regulation of any state, local, or regional agency, or federal agency to the extent permitted by federal law. (Pub. Resources Code § 25500.)

This means that the Commission's own procedures, not those of agencies without permitting authority, control.

Nevertheless, the Commission extensively coordinated with other governmental agencies – as is required by its own governing statutes and regulations. (§25519, 25519.5, 25523(d)(1); Cal. Code of Regs., tit. 20, §1718.) As is described in the Decision, the staff coordinated with many federal, state, regional and local agencies, including San Joaquin County, the San Joaquin Council of Governments, and the City of Tracy. (Decision, p. 7.) Indeed, the staff had several communications with Battalion Chief Larry Fragoso of the Tracy Fire Department. Originally, staff spoke with Chief Fragoso in November, then in a "subsequent telephone conversation on December 19, 2001, the Chief stated that he had reconsidered the issue of department staffing and retracted his earlier statements on the need for additional staff. Based on this revised statement, staff

concludes that there are no significant impacts." (Staff Assessment, pp. 5.13-5, 5.13-6, 5.13-13.)

B. Substantial Evidence Supports the Commission's Findings That the Project Will Comply with All Applicable LORS.

Petitioner erroneously asserts that the Commission failed to make required findings on LORS compliance and the findings that were made were not supported by substantial evidence. (Petition, p. 17.)

1. The Commission Decision Correctly Finds that the TPP Will Comply with the San Joaquin County General Plan.

The Commission's Decision lists and assesses the Project's compliance with all the applicable goals and policies in the County's General Plan. (See Decision, p. 213.)

The first applicable policy is Agricultural Lands Policy 7. Because construction of the project would result in the loss of 10.3 acres of agricultural land, the project without mitigation would not meet the Goal of protecting the County's agricultural resources. (Decision, p. 214.) Therefore, the Commission adopted a condition of certification that requires the applicant to mitigate completely the agricultural losses by contributing to the American Farmland Trust to purchase conservation easements, thereby bringing the project into compliance with Agricultural Lands Policy 7. (Decision, pp. 214 - 215; Staff Assessment, pp. 3.4-25, 3.4-31 – 3.4-32.)

The Decision further finds, based on the staff's testimony, that the project would be consistent with Agricultural Lands Policies 5 and 8, which require that all non-farm uses on agricultural land will be compatible with agricultural

operations. The project is required to use the resources that already exist on the site (transmission and natural gas lines), and the location of the site is immediately south of a cluster of other industrial uses. (Decision, pp. 215 – 216; Supplement to Staff Assessment, p. 3.4-6.)

Finally, the Decision addresses the Community Organization and Development Pattern Policies of the General Plan and finds that constructing the project on a site adjacent to the railroad right-of-way and an industrial area constitutes an industrial expansion that will "complement and blend in with surrounding uses," as allowed by the General Plan. (Decision, p. 215; Supplement to Staff Assessment, p. 3.4-15-18.)

2. The Commission Decision Correctly Finds that the TPP Will Comply with the San Joaquin Development Title.

Petitioner asserts that the project is not in compliance with the County's "Development Title," which serves the County's zoning ordinance. (Petition, pp. 43 – 44.) The Development Title requires the County to make various findings when it approves a site or issues a use permit. (Petition, Appendix, Tab 2, p. 435.)

The Decision states that the Commission was not required to make the findings listed in the Development Title because the County's process is superseded by the Commission's site certification process. (Decision, pp. 218 – 219.) The Decision also notes, however, that the record contains substantial evidence, presented in the staff's testimony, that the proposed TPP would in fact satisfy each of the otherwise applicable criteria in the Development Title. (*Id.*, p. 219)

3. The Commission Decision Correctly Determines that City of Tracy LORS Are Not Applicable To the TPP.

Petitioner claims that the project does not comply with various laws of the City of Tracy and that the Commission thus erred by approving the Project without making the override findings required by section 25525. (Petition, pp. 47 - 50.) However, as the Decision explains at length, the City's laws are not applicable to the Project because the Project is not within the boundaries of the City. Therefore, there is no requirement for compliance (or in the alternative, an override). (Decision, pp. 220 – 222.)

Petitioner attempts to escape this quandary by asserting that the Commission must find that a proposed power facility must comply not only with all "applicable" LORS but also with other, additional "relevant" LORS. (Petition, p. 47.) Petitioner fails to explain how any law that is not "applicable" could be "relevant."³ Indeed, it is clear from the statutes that the Legislature has used the terms interchangeably to mean those statutes that would apply were it not for the Commission's preemptive certification jurisdiction. For example, while section 25523, subdivision (d) requires the Commission to make findings on conformance with "relevant" laws, section 25525, which establishes the compliance-or-override requirement, only applies that requirement to "applicable" laws. (Similarly, under CEQA an agency must determine whether a project conflicts with the land use

³ Petitioner puts heavy, and misplaced, reliance on sections 25003, 25505, 25511, subdivision (c), and 25514, subdivision (a)(2), as well as section 1714.3 of the Commission's regulations in title 20 of the California Code of Regulations. (See Petition, pp. 30, 33 – 36, 48 – 49.) None is applicable here. Section 25003 is a general policy statement that imposes no regulatory requirements, and all of the other provisions apply not to applications for certification proceedings such as the TPP project, but rather to a preliminary, more general "notice of intention" process that the TPP was not required to undergo (see § 25540.6, subd. (a)(1)).

plans, policies, or regulations of an agency with "jurisdiction over the project."
(Cal. Code Regs., tit. 14, § 15387, App. G.))

The Commission made its determination on the applicability of the City of Tracy LORS only after it received substantial input from several parties, including Petitioner. The Committee spent hours in evidentiary hearings on the subject, and then invited all parties to submit briefs on the applicability and compliance of the project with local LORS. After reviewing the extensive written and oral testimony and reviewing the briefs filed by the parties, the Committee determined that the Project was not required to comply with City of Tracy LORS but that it did, in fact, comply with all LORS that are applicable. The Decision provides considerable discussion of these matters. (See Decision, pp. 211 - 226.)

III. THE COMMISSION PROVIDED A THOROUGH ANALYSIS OF THE PROJECT IN ACCORDANCE WITH CEQA.

Petitioner claims that the Commission violated CEQA because it failed to meet its duty to "assure that an the environmental document it prepared for the Project included a description of the of the Project, alternatives to the Project and mitigation measures to minimize the Project's potentially significant adverse environmental impacts" and to "solicit meaningful public input on its environmental document, and to respond in writing to all significant environmental points raised by public during the administrative evaluation process." (Petition, pp. 50 - 51.) Petitioner is wrong on all counts.

The Commission's Decision describes the Project and its potential impacts, assesses potential alternatives, and adopts mitigation measures necessary to avoid the potential impacts or to reduce them to a level of insignificance. (Decision, pp. 9 – 15, 41 - 58, 74 - 80, 86, 108 - 128, 140 - 141, 146 - 148, 155 - 157, 169 - 175,

185 - 186, 192 - 198, 202 - 210, 227 - 228, 240 - 242, 254 - 260, 271 - 274, 284 – 289.) The Commission's analysis and findings are supported by a considerable amount of evidence in the record. For example, the Staff Assessment contains over 400 pages, analyzing 19 technical areas, including Air Quality, Biological and Cultural Resources, Public Health, Land Use, Worker Safety and Fire Protection, Noise, Hazardous Materials, Water, and Visual Resources, as well as several engineering disciplines. (Staff Assessment and Supplement.) The Assessment begins with a project description, discusses potential impacts and mitigation measures to avoid the impacts or reduce them to insignificance, and concludes with a discussion of project alternatives. (Staff Assessment, at section 3, 7.) As described above, the Commission's proceeding provided numerous opportunities for public input, of which the Petitioner took full advantage, and the Staff Assessment includes a section in each technical area titled "Response to Public and Agency Comments," in which the staff addresses all environmental concerns and comments raised during the proceeding. (See Staff Assessment, pp. 4-1 to 4-6, 5-56 to 5-61, 5.1-16 to 5.1-17, 5.3-8 to 5.3-9, 5.5-10 to 5.5-11, 5.6-14, 5.7-16 to 5.17-18, 5.8-14, 5.11-31, 5.12-8; Staff Supplement, pp. 3.2-20 to 3.2-21, 3.4-26 to 3.4-31, 3.5-12.) The Commission more than fulfilled the requirements of CEQA, and Petitioner's claims are without merit.

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CONCLUSION

For all of the reasons set forth herein, the claims in the Petition are baseless and the Petition should be denied.

Respectfully submitted,

Dated: August 23, 2002

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